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No. _____

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1988

THE STATE OF FLORIDA,

Petitioner

vs.

MARTIN LESLIE WELLS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

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April 28, 1989

QUESTION PRESENTED

WHERE A LAW ENFORCEMENT AGENCY MAINTAINS INSTRUCTIONS REQUIRING A COMPREHENSIVE AND DETAILED INVENTORY FOR ALL IMPOUNDED CARS, BUT CLOSED CONTAINERS ARE NOT SPECIFICALLY DEALT WITH, DOES THIS TYPE OF INSTRUCTION PERMIT AN IMPOUNDING OFFICER TO SEARCH AND INVENTORY CLOSED CONTAINERS?

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OPINIONS BELOW

The opinion of the Supreme Court of Florida is reported at ___ So.2d ___, 14 F.L.W. 87, No. 69.363 (Fla. March 2, 1989). (Pet. App. 1a-36a). This opinion was entered on rehearing and the

original opinion was withdrawn and is not reported, except at 13 F.L.W. 686 (Fla. Dec. 1, 1988). (Pet. App. 37a-72a).

The opinion of the District Court of Appeal of Florida, Fifth District is reported at 492 So.2d 1375. (Pet. App. 73a-90a).

The trial court's order denying the motion of Respondent, Martin Leslie Wells to suppress evidence is not reported. (Pet. App. 91a-92a).

JURISDICTION

The Supreme Court of Florida's opinion on rehearing was filed on March 2, 1989. This Court has jurisdiction. 28 U.S.C. §1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Amendment IV, United States Constitution, provides, in pertinent part:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause ...

Amendment XIV, Section 1, United States Constitution provides, in pertinent part:

> ... nor shall any state deprive any person of life, liberty, or property, without due process of law ...

Article I, Section 12, Florida Constitution, provides:

> The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall

> be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

STATEMENT OF THE CASE

Respondent, Martin Leslie Wells ("Wells"), was the respondent in the Supreme Court of Florida. The facts of this case, as set forth in the decision below, are as follows:

> While driving a car loaned by a friend, respondent was stopped by the highway patrol for speeding. The trooper noticed the smell of alcohol upon respondent's breath and arrested him for driving under the influence. At this time, respondent agreed to accompany the trooper to the station to take a breathalyzer test. When respondent asked if he could retrieve a coat from the automobile, the trooper agreed, but accompanied respondent to the vehicle. At this point, the trooper saw an amount of cash lying on the car's floorboard. 492 So.2d at 1375-76.
>
> Suspicious of the cash's origin, the trooper asked respondent to open the trunk of the car. Respondent agreed, stating that he did not know what was in the trunk. However, neither respondent nor the trooper were able to manipulate a special locking mechanism that opened the trunk only when the key was pushed in and turned simultaneously. Giving up the effort, the trooper told respondent that the automobile must be impounded and received permission to force the trunk open if necessary and look inside. The trooper did not ask for or receive permission to look in the passenger compartment. Id. at 1376.
>
> The car subsequently was transported to a facility under contract with the state, where a search was conducted. During the search, two marijuana cigarette butts were found in an ashtray. The trooper, assisted by others, opened the trunk with the key and found a locked suitcase inside. Under the direction of the trooper, employees of the facility attempted to pry open the suitcase with a knife. Some ten minutes later they succeeded, and found a garbage bag inside containing a large amount of marijuana. Id.

Respondent was charged with possession of a controlled substance. After his motion to suppress the contraband was denied at trial, respondent pled nolo contendere, but reserved his right to appeal on the suppression issue. The Fifth District later determined that the trial court had erred, and ordered the contraband suppressed. Id. at 1375, 1378. From this order, the state now seeks review.

[1] A test later showed that respondent's blood alcohol content was below the legal limit. Wells v. State, 492 So.2d 1375, 1376 n.1 (Fla. 5th DCA 1986).

(Pet. App. 2a-4a).

The Supreme Court of Florida accepted the State's petition for discretionary review. That court approved in part and quashed in part

the decision of the district court.[1] The Supreme Court concluded that Well's consent to search was strictly limited to the trunk and the seizure of the marijuana cigarette butts from the passenger compartment and the marijuana from the suitcase was, on this ground, properly suppressed. The court also concluded that even though the vehicle was legally impounded, the permissible scope of the inventory search only extended to the interior of the car and not to the opening of the suitcase

[1] The Supreme Court of Florida's opinion on rehearing modified its original opinion only by finding that the seizure of the marijuana cigarette butts discovered during the inventory search of the passenger compartment was constitutional. The Court did not modify its holding that the scope of the inventory search did not extend to closed containers without a standardized policy on the subject.

found in the trunk. [2] Therefore, on this ground, the court quashed that part of the district court's decision that suppressed the marijuana cigarette butts and approved the part which suppressed the marijuana found in the suitcase. (Pet. App. 5a-23a).

With respect to the scope of the inventory search, the court found that Colorado v. Bertine, 479 U.S. 367, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987), required the suppression of the marijuana found in the closed suitcase. According to the court, Bertine requires that there be specific

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[2] The court's opinion validated an inventory search of the interior of the vehicle, without differentiating between the passenger compartment and the trunk. The Court's rationale, however, accepts the validity of the inventory search of the trunk, but not of the closed containers found within the trunk.

policies regarding the scope of an inventory search. Such policies are required to limit the impermissible discretion a police officer has when it is his decision to open or not a closed container. The court, relying on part of Footnote 6 of Bertine, found the foregoing to be a clear holding of the Bertine Court. Footnote 6 states:

> We emphasize that, in this case, the trial court found that the police department's procedures mandated the opening of closed containers and the listing of their contents. Our decisions have always adhered to the requirement that inventories be conducted according to standardized criteria.

(Quoted in Pet. App. 17a-18a). (Florida Supreme Court emphasis).

In applying this interpretation, the court found that the Florida

Highway Patrol did not have a standard procedure that mandated the opening of all containers found during an inventory search. The failure to have such a policy placed impermissible discretion with the police, and therefore the opening of the suitcase violated Bertine. (Pet. App. 19a-21a).

The dissent found that the majority's interpretation of Bertine was overly restrictive and erroneous. (Pet. App. 26a-27a). The purpose of an inventory search is: to protect the owner's property; to protect the police against claims over lost and stolen property; and to protect the police from potential dangers. South Dakota v. Opperman, 428 U.S. 364, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976). (Pet. App. 27a). The Florida Highway

Patrol's manual was designed to meet these purposes when it made the impounding officer liable for the vehicle, its parts and contents and instructed the impounding officer to inventory all articles in the vehicle. (Pet. App. 27a-29a). The dissent also concluded that when a legitimate impoundment is made and standard police instructions mandate that an inventory be conducted, the scope of the inventory encompasses the entire vehicle and its contents. (Pet. App. 29a-30a). The need for specific guidelines delineating the scope of the search is not required under Bertine as long as there is a standard policy that all impounded vehicles be inventoried and that the reasons for the policy is consistent with the three purposes of the inventory search set forth in

Opperman and reiterated in Bertine. (Pet. App. 30a-32a). Therefore, the dissent would have entirely quashed the district court's decision and would have reinstated the conviction. (Pet. App. 35a).

REASON FOR GRANTING THE WRIT

THE DECISION OF THE COURT BELOW THAT THE INVENTORY SEARCH OF THE CLOSED SUITCASE EXCEEDED THE SCOPE OF THE STANDARD POLICE INSTRUCTIONS FOR INVENTORY SEARCHES CONFLICTS WITH DECISIONS OF THIS COURT, DECISIONS OF THE UNITED STATES COURTS OF APPEAL, OR DECISIONS OF APPELLATE COURTS OF THE OTHER STATES.

After Well's vehicle was lawfully impounded, an inventory search, pursuant to Florida Highway Patrol's standardized procedure, was conducted. According to the Florida Highway Patrol's written rules, the vehicle, its parts, and contents were to be searched and inventoried. (Pet. App. 93a). The Supreme Court of Florida, relying on Colorado v. Bertine, 479 U.S. 367, 107 S.Ct. 738, 93 L.Ed.2d 739

(1987), upheld the inventory search of the interior of the car, but invalidated the inventory search of the closed suitcase because the Florida Highway Patrol did not maintain a specific standardized policy regarding the opening of closed containers located in the car during lawful inventory searches. The court concluded that without a specific policy covering the subject, impermissible discretion was given to the searching officer to determine in all situations, whether or not to open a closed container. The court specifically relied on Footnote 6 of Bertine, quoted in text supra, at 11.

This holding, based on a erroneous interpretation of Bertine, resulted in an overly restrictive misapplication of

the law to the facts herein. The proper interpretation of Bertine is that there must be a standardized policy to inventory all impounded vehicles and that the standardized policy must meet the purposes encompassing the inventory search exception to the warrant requirement. When the standardized policy is designed to accomplish the goals of an inventory search, then the scope of the search extends to all parts and contents of the vehicle which are necessary to achieve the purposes of the search.

This Court first recognized the inventory search exception to the warrant requirement in South Dakota v. Opperman, 428 U.S. 364, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976), holding that

the contents of vehicles taken into police custody may be inventoried without a warrant, probable cause or reasonable suspicion. Opperman identified three justifications for the inventory exception: protection of the owner's property while it is in police custody; protection of the police against claims of lost or stolen property; and protection of the police from danger. Id., 428 U.S. at 369, 96 S.Ct. at 3097, 49 L.Ed.2d at 1005. These justifications were reiterated in Bertine, supra, 479 U.S. at 372, 107 S.Ct. at 741, 93 L.Ed.2d at 745. These strong governmental interests are sufficient to justify a routine inventory of the contents of impounded vehicles.

In the present case, the Florida Highway Patrol Forms and Procedures Manual concerning inventory searches is designed to meet the strong governmental interests identified in Opperman. Chapter 16, Section 16.00.00, of the manual, states:

> **Purpose of Vehicle and Property Receipts**
>
> In the course of duty on a day to day basis, it is necessary for the protection of the Trooper and the Department to inventory vehicles being towed and/or stored. Vehicles which are towed as a result of an accident, abandoned, seized, incident to an arrest, or otherwise detained in storage, and not in the possession of the owner becomes the responsibility of the impounding officer. The officer is liable for the vehicle, its parts and contents. Therefore, for the protection of the officer and the Department, the following forms and instructions have been developed for the

> Trooper to inventory and make a record of vehicle and private property on an inventory sheet that will also serve as a receipt with (1) a copy for the Department, (2) a copy for the towing company, (3) a copy of release, (4) a copy for the impounding officer, and (5) a copy for the owner/or driver. The same amount of copies of the Property Receipt with the same designation will be provided.

(Pet. App. 93a). (Emphasis supplied). Section 16.01.00 provides that inventory forms are to be used <u>any</u> time a vehicle is impounded. (Emphasis supplied). (Pet. App. 94a). Section 16.02.00 requires that an officer, when completing the inventory and vehicle storage receipt, list an inventory of <u>all articles</u> on the vehicle and gives examples thereof. (Emphasis supplied). (Pet. App. 99a).

The foregoing instructions establish that an inventory search is required on all impounded vehicles and its scope extends to all articles located anywhere in the vehicle. These standard instructions are consistent with the purposes of the inventory search as set forth in <u>Opperman</u> and reiterated in <u>Bertine</u>, to wit: the protection of the owner's property and the protection of the police against claims of lost property and from danger of articles located within the vehicle.

The dissent in the court below, relied on the foregoing analysis. (Pet. App. 26a-30a). The dissent further realized that to require a specific policy regarding opening of closed containers would not adequately serve the purposes behind an inventory

search. (Pet. App. 30a). The reason why the purposes would not be served is self evident. Absent inspection of closed containers, not only can claims of lost property be made, but more importantly dangerous explosives, either intentionally or innocently assembled, could remain undiscovered until tragedy occurred.

The dissent then exposed the false premise underlying the majority's opinion:

> The majority's conclusion that here, unlike Bertine, the police operating instructions do not mandate the opening of closed containers is contrary to the facts of Bertine as we have them. Neither Chief Justice Rehnquist's opinion for the Court nor Justice Blackmun's concurring opinion actually quotes the police operating instructions which the Court

found mandated opening closed containers for inventory. These instructions were, however, quoted by Justice Marshall in dissent where he argued that no standardized criteria limited the police officer's discretion. The operative words are "the Officer shall conduct a detailed vehicle inspection and inventory and record it upon the VEHICLE IMPOUND FORM." Bertine, 479 U.S. at 380 n.4. These instructions require a "detailed" inventory but they are certainly no more explicit or definitive than the Patrol instructions quoted above which make the impounding officer responsible for the vehicle, its parts and contents, and require completion of an inventory form listing all articles, such as articles of clothing, equipment, and tools. Chief Justice Rehnquist, for the Court, responded to Justice Marshall's criticism by finding that the instructions not only circumscribed the discretion of individual officers, they also protected the vehicle and its contents and minimized claims of property loss. Bertine, 479 U.S. at 376 n.7. The standard Patrol instructions here are even more specific

> than those which the Bertine concurring opinion found "mandate[d] the opening of closed containers and the listing of their contents." 479 U.S. at 377 (Blackmun, J., concurring). In my view, Bertine stands for the proposition that when a legitimate impoundment is made and standard police instructions mandate that an inventory be conducted, contraband discovered is constitutionally admissible.

(Pet. App. 30a-32a). Based on the foregoing, the Supreme Court of Florida's interpretation of Bertine is erroneous and thus is in direct conflict with precedent from this Court on this question.

The decision below also expressly conflicts with decisions of the United States Courts of Appeal on this issue. It also conflicts with decisions of appellate courts of other states.

In United States v. Frank, 864 F.2d 992 (3rd Cir. 1988), the court was faced with the same situation as the instant case. In Frank, the defendant, relying on Footnote 6 of Bertine, contended that a legally valid inventory search did not occur because there was no finding that the police were following preexisting standardized procedures. Specifically, defendant contended that the opening of a locked trunk, the removal of a zippered garment bag therefrom and the opening of the zipper to inventory the contents was not authorized since specific standardized procedure did not exist concerning the opening of closed containers. In support of this contention, defendant therein relied on the same dicta in Footnote 6 of Bertine that the Supreme Court of

Florida did in invalidating the inventory search in question.

The Third Circuit, engaged in the same analysis the dissent in the instant case did concerning the need for a specific policy for opening closed containers. After reviewing the pertinent decisions from this Court, that court concluded, as did the dissent herein, that this Court's prior opinions do not require a specific policy concerning closed containers. Id. at 1002-1003. The Court then found that the police regulations in question mandated that all impounded vehicles be inventoried but that there was no formalized scope for said inventory. The court, after identifying the governmental interests enunciated in Opperman, held:

> ... When, as here, a zippered hanging bag containing personal property is taken into police custody, no standard for the scope of the inventory other than the listing of every item of property would satisfy the relevant governmental interests. Black's Law Dictionary defines "inventory" as " a list or schedule of property, containing a designation or description of each specific article." Black's Law Dictionary 740 (5th Ed. 1979). Elsewhere the word is likewise defined as "a formal, often descriptive, list of articles, giving the code number, quantity and value of each; catalog." Random House Dictionary of the English Language (2d ed. 1983). Use of the term "inventory" of necessity defines it scope. Certainly the Court did not intend to lay down a constitutional requirement that the police have a written standard for conducting an inventory that merely states the obvious. Such a requirement would add nothing to the protection of privacy interest, for no standard ever would be laid down except that, of

completeness. Inventory searches by their nature afford the police the opportunity to eliminate expectations of privacy in personal property lawfully in police custody. It seems likely, therefore, that all that *Bertine* requires is a standard as to when inventories should be made. If more is required, Lieutenant Kowalski's testimony, that an inventory is required sufficient to safeguard the property, satisfied that requirement, since it necessarily implies a detailed account, catalog or schedule.

Id. at 1003-1004.

In United States v. Judge, 864 F.2d 1144 (5th Cir. 1989), Drug Enforcement Administration (DEA) agents, during a lawful inventory search, opened a closed backpack and found $65,000. The court concluded that the inventory search was conducted pursuant to a procedure sufficiently standardized to

satisfy the Fourth Amendment, even though the DEA leaves to its agents discretion to decide whether an object is a "container" and whether to take the container into custody. The court found that, under Bertine, law enforcement officers may open closed containers during an inventory search, only if the search is being carried out pursuant to a standard procedure that requires the opening of such containers in every case. Here, the court said, the virtually infinite number of objects that could be deemed containers makes the decision whether an object is a container inherently discretionary. Thus, the pertinent question is whether the search can objectively be viewed as motivated by administrative or safety motives rather than evidentiary concerns. Since a backpack is likely

to contain effects of value to the owner, a search of it can reasonably be viewed as meant to further the administrative purposes underlying the inventory search exception, to wit: the safe-guarding of property and the protection of police. A similar analysis was applied to DEA Agents' discretion in deciding whether to take a container into custody.

In United States v. Porter, 859 F.2d 83 (8th Cir. 1988), after Porter was arrested his car was searched and a locked briefcase was found in the trunk. The briefcase was forced open revealing a large quantity of drugs. The court, relying on Bertine, held the search constitutional as a valid inventory search. The standard police procedure relied upon was simply the

police officer's testimony that" the search was pursuant to local and federal police policies requiring the officers to inventory the contents of vehicles thoroughly." Id. at 83.

In State v. Muralt, 376 N.W.2d 25 (N.D. 1985) cert. denied, 479 U.S. 1063, 107 S.Ct. 947, 93 L.Ed.2d 997 (1987), the defendant was arrested for being in physical control of a motor vehicle while under the influence of alcohol. During an inventory search of the vehicle, a canvas bag was found on the back seat and when it was opened a sawed-off shotgun was discovered. The court concluded that routine police procedures was all that was necessary to validate the search as long as it was done in accordance with the Opperman justifications.

In State v. Shamblin, 763 P.2d 425 (Utah 1988) the defendant was arrested for driving under the influence and an inventory search uncovered a zippered shaving kit bag. The officer unzipped the bag and discovered marijuana. The court, after finding that procedures did not exist governing the opening of closed containers during inventory searches, suppressed the evidence. The court, relying on Footnote 6 of Bertine, concluded that a standardized policy regarding closed containers is required to insure that impermissible discretion would not be used by police.

As the foregoing decisions evidence, the majority of appellate courts that have reached the question, have held that as long as there is a

standardized policy requiring that all impounded cars be inventoried, then there is not a need for a specific standardized policy regarding closed containers. The reason therefore is that since an inventory search is conducted for administrative or safety needs then the search of all articles which fall within the parameters of those needs is constitutional regardless of where the article is located. To require otherwise would effectively negate the ability to effectuate the Opperman justifications. Besides the instant decision, only the Utah Supreme Court has applied the restrictive interpretation of Bertine, requiring a specific standardized policy for closed containers. Both courts relied on Footnote 6 of Bertine, while the other courts rejected the

contention that Footnote 6 controls. The present split in authority will only continue to widen without guidance from this Court, and therefore this case warrants consideration by this Court.

CONCLUSION

Based on the foregoing reasons, the Petitioner, **THE STATE OF FLORIDA**, respectfully requests that this Court grant its Petition for a Writ of Certiorari to the Supreme Court of Florida.

Respectfully submitted,

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APPENDIX

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STATE OF FLORIDA,
Petitioner,

v.

MARTIN LESLIE WELLS,
Respondent.

No. 69,363

Supreme Court of Florida

March 2, 1989

PER CURIAM.

On motion for rehearing by petitioner, we withdraw our prior opinion in this cause and substitute the following as the opinion of the Court.

We have for review Wells v. State, 492 So.2d 1375 (Fla. 5th DCA 1986), based on express and direct conflict with State v. Wargin, 418 So.2d 1261 (Fla. 4th DCA 1982). We have jurisdiction. Art. V, § 3(b)(3), Fla. Const. We approve in part and quash in

part the decision of the district court below.

While driving a car loaned by a friend, respondent was stopped by the highway patrol for speeding. The trooper noticed the smell of alcohol upon respondent's breath and arrested him for driving under the influence. At this time, respondent agreed to accompany the trooper to the station to take a breathalyzer test.[1] When respondent asked if he could retrieve a coat from the automobile, the trooper agreed, but accompanied respondent to the vehicle. At this point, the trooper saw an amount of cash lying on the car's floorboard. 492 So.2d at 1375-76.

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[1] A test later showed that respondent's blood alcohol content was below the legal limit. Wells v. State, 492 So.2d 1375, 1376 n.1 (Fla. 5th DCA 1986).

Suspicious of the cash's origin, the trooper asked respondent to open the trunk of the car. Respondent agreed, stating that he did not know what was in the trunk. However, neither respondent nor the trooper were able to manipulate a special locking mechanism that opened the trunk only when the key was pushed in and turned simultaneously. Giving up the effort, the trooper told respondent that the automobile must be impounded and received permission to force the trunk open if necessary and look inside. The trooper did not ask for or receive permission to look in the passenger compartment. Id. at 1376.

The car subsequently was transported to a facility under contract with the state, where a search was conducted. During this search, two marijuana cigarette butts were found in

an ashtray. The trooper, assisted by others, opened the trunk with the key and found a locked suitcase inside. Under the direction of the trooper, employees of the facility attempted to pry open the suitcase with a knife. Some ten minutes later they succeeded, and found a garbage bag inside containing a large amount of marijuana. Id.

Respondent was charged with possession of a controlled substance. After his motion to suppress the contraband was denied at trial, respondent pled nolo contendere, but reserved his right to appeal on the suppression issue. The Fifth District later determined that the trial court had erred, and ordered the contraband suppressed. Id. at 1375, 1378. From this order, the state now seeks review.

The facts of this case raise three distinct questions of search and seizure law: the scope of the consent search conducted in this instance, the propriety of opening the locked container found during the automobile inventory search, and the propriety of the impoundment of respondent's vehicle.

The Consent Search

The state urges us to hold that respondent's general consent to open and look into the trunk of the automobile was sufficient to authorize the opening of any locked or closed containers found there. In support of this argument, the state contends that Wargin correctly extended the principles of United States v. Ross, 456 U.S. 798 (1982), to the consent-search context. We cannot agree.

Ross clearly stands for the proposition that, so long as probable cause exists to search an automobile, the police lawfully can search any container found inside. Thus, the Ross Court upheld the search of an automobile after the police received a tip from a reliable informant that drugs were being sold from the vehicle, stopped it and found a paper bag and a zippered pouch containing contraband and a large amount of cash. 456 U.S. at 800-01. Based on these facts, Ross held: "If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." Id. at 825 (emphasis added).

There was no issue of a consent search in Ross. Indeed, the principles

that apply to probable cause searches are totally incongruous to the freedom of choice inherent in consent. As State v. Fuksman, 468 So.2d 1067 (Fla. 3d DCA 1985), and the district court below recognized:

> The considerations upon which the holding in Ross is grounded do not exist in the consent search context where there is no probable cause. If a person consents to the search of a vehicle containing luggage and a search of the vehicle alone reveals nothing, the problem of the possible greater intrusion by detention or seizure does not arise because the probable cause necessary to secure the warrant is nonexistent. Therefore, the officer has no dilemma because he has no choice; he must let the consenting party be on his way. It is because the citizen has not given the police probable cause to believe his vehicle contains contraband that he has the right to proceed without official interference. Absent probable cause, the police can engage in the greater intrusion of searching the

> luggage only under circumstances in which the scope of the consent to search is defined clearly enough to include the luggage.

Fuksman, 468 So.2d at 1070. A consensual search by its very definition is circumscribed by the extent of the permission given, as determined by the totality of the circumstances. Id. On the other hand, a probable cause search and its scope are compelled, no matter what might be the wish of the individual. A theory based on consent and one based upon state-sponsored coercion thus are incompatible, and fusing them could lead to absurd results. Under such logic, the search of the trunk of a car would be permitted even if the defendant had said, "You can look in my car but not in my trunk."

Thus, we decline to apply Ross to consent searches, and, to the extent it conflicts with our opinion today, we disapprove Wargin. We cannot agree that the state and its agents, by receiving an ill-defined or limited consent to be searched, suddenly are vested with all the authority conferred by a warrant. Such a holding effectively would vitiate the entire theory upon which the consent search rests.

We also concur with the district court's conclusion that the consent given in this instance did not permit the police to pry open locked luggage with a knife. Respondent's permission merely indicated that the police could look into the automobile trunk. This was an insufficient basis for the police action that followed.

In so holding, we decline to establish a rule that effectively would countenance breaking open a locked or sealed container solely because the police have permission to be in the place where that container is located, as in this instance. This would render the very act of locking or sealing the container meaningless and would utterly ignore a crucial concern underlying fourth amendment jurisprudence: the expectation of privacy reasonably manifested by an individual in his locked luggage, no matter where that luggage is located.[2]

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[2] Ross itself reached this conclusion when it explicitly distinguished United States v. Chadwick, 433 U.S. 1 (1977), and Arkansas v. Sanders, 442 U.S. 753 (1979). See United States v. Ross, 456 U.S. 798, 811-15 (1982). Chadwick had drawn a clear distinction between automobiles, which have a "diminished expectation of privacy," 433 U.S. at 12, and luggage which has "expectations of privacy ... substantially greater than

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in an automobile." Id. at 13. Sanders had suggested that a warrant was required to open a suitcase where "it was the luggage being transported by respondent at the time of the arrest, not the automobile in which it was being carried, that was the suspected locus of the contraband." 442 U.S. at 767 (Burger, C.J., concurring in the judgment). Ross reaffirmed this holding, although it rejected some of Sanders' analysis. 456 U.S. at 824. If this conclusion applies when the police actually have probable cause to search luggage, it certainly applies when they do not.

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433 U.S. at 13. Moreover, Chadwick expressly noted that the search of the footlocker was a far greater intrusion into interests protected by the fourth amendment than was the mere seizure of the footlocker. Id. at 14 n.8.

When the police are relying upon consent to conduct a warrantless search, they have no more authority than that reasonably conferred by the terms of the consent. If that consent does not convey permission to break open a locked or sealed container, it is unreasonable for the police to do so unless the search can be justified on some other basis. Our own courts generally have agreed on this principle. State v. Carney, 423 So.2d 511 (Fla. 3d DCA 1982) (permission to go aboard boat did not give consent to open hidden compartments and containers therein); Loftis v. State, 391 So.2d 219 (Fla. 1st DCA 1980) (defendant's cooperation in opening truck did not give agricultural inspector consent to remove and open taped package), review denied, 399 So.2d 1146 (Fla. 1981);

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In the present case, the arresting officer plainly stated that he had no actual consent to open the suitcase found in the automobile trunk.[3] We

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[3] The following colloquy with the arresting officer occurred:

> Q: Did [Wells] give you pemission to go into the trunk of that car?
> A. Oh, yes, no problem, but he said -- I said: "Do you mind if I look in your trunk," and he said, "Sure, go right ahead."
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thus must agree with the court below that the general consent to look in an automobile trunk in this case did not constitute permission to pry open a locked piece of luggage found inside.[4]

> Q: Now, since [Wells] had indicated to you that he did not know what was in the trunk, you clearly did not extend the questioning to say: "Well, whatever I find in the trunk, is it okay if I look in that, too?"
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> A. No, I didn't.

[4] We acknowledge that this case raises an issue as to whether respondent had standing to assert a privacy interest in the luggage itself, since he apparently contended the luggage was not his. See United States v. Salvucci, 448 U.S. 83 (1980) (receding from the "automatic standing" doctrine). We find, however, that the state effectively has waived this argument by failing to raise it below, or in this appeal. See Steagald v. United States, 451 U.S. 204, 209 (1981). Moreover, respondent unquestionably does have a protected privacy interest in the borrowed car he was driving, which confers standing to challenge both the impoundment and

Wells, 492 So.2d at 1378. The very act of locking such a container constitutes a manifest denial of consent to open it, readily discernible by all the world. It creates a legally recognized zone of privacy inside that container, Arkansas v. Sanders, 442 U.S. 753, 765-66 (1979), that is protected under the United States Constitution and Florida's privacy amendment from the kind of governmental intrusion without probable cause that occurred in this case. See Art. I, § 23, Fla. Const.

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inventory search conducted in this instance. See United States v. Posey, 663 F.2d 37 (7th Cir.), cert. denied, 455 U.S. 959 (1982); State v. Warren, 59 N.C. App. 264, 296 S.E.2d 671 (1982), aff'd in pertinent part, 309 N.C. 224, 306 S.E.2d 446 (1983); People v. Robinson, 121 Misc.2d 267, 467 N.Y.S.2d 552 (Westchester County Ct. 1983); People v. Zimmerman, 117 Misc.2d 121, 458 N.Y.S.2d 468 (Sup. Ct. 1982).

As to the marijuana cigarette butts found in the ashtray, we conclude that their seizure is not sustainable under a consent theory, since the trooper neither asked for nor received permission to search the passenger compartment.

The Inventory Search

We must also reject the state's contention that the seizure of the luggage was independently permissible under an inventory search theory. In Colorado v. Bertine, 107 S.Ct. 738 (1987), the United States Supreme Court delineated the requirements for opening sealed containers during a proper inventory search. Bertine stated:

> We emphasize that, in this case, the trial court found that the police

> department's procedures mandated the opening of closed containers and the listing of their contents. Our decisions have always adhered to the requirement that inventories be conducted according to standardized criteria.

Id. at 742 n.6 (emphasis added; citations omitted). As Justice Blackmun noted in his special concurring opinion, joined by two other justices:[5]

> The underlying rationale for allowing an inventory exception to the Fourth Amendment warrant rule is that police officers are not vested with discretion to determine the scope of the inventory search. This absence of discretion ensured that

[5] These three justices also concurred in the majority opinion, and specifically cited footnote 6 as a reason for so doing. 107 S.Ct. at 744. As a ground upon which a majority of the Court agreed, the "no discretion" requirement constitutes a clear holding of the Bertine court.

> inventory searches will not be used as a purposeful and general means of discovering evidence of crime. Thus, it is permissible for police officers to open closed containers in an inventory search only if they are following standard police procedures that mandate the opening of such containers in every impounded vehicle.

Id. at 744 (Blackmun, Powell & O'Connor, JJ., concurring) (emphasis added; citation omitted).

The impermissible discretion to open or not to open containers is evident in this case. Contrary to Bertine's holding, the Florida Highway Patrol ("Patrol"), at least upon this record, operates under no mandatory standardized policy regarding closed containers. Unlike in Bertine, this record is devoid of any trial-court finding "that the police department's standard procedures did mandate the

opening of closed containers and the listing of their contents." Id. Joining this action as amicus curiae, the Patrol itself has submitted copies of relevant portions of its Policy Manual, which fail to address the question. Chapter 16 of the Policy Manual, governing the receipt of property and vehicles, speaks in general terms and requires nothing more than an "[i]nventory of all articles in the vehicle ... such as articles of clothing, equipment and tools." Policy Manual, at 16-4. There is no mention of opening closed containers.

In the absence of a policy specifically requiring the opening of closed containers found during a legitimate inventory search, Bertine probitis us from countenancing the procedure followed in this instance.

The police under Bertine must mandate either that all containers will be opened during an inventory search, or that no containers will be opened. There can be no room for discretion. Since this record reveals no such mandatory policy, we must hold that the opening of the luggage in this instance violated Bertine.

The Impoundment Issue

Finally, we find that the impoundment in this instance, and hence the seach of the interior of the car that followed was proper under Bertine. This conclusion is compelled by the fact that, to the extent of any inconsistency, Bertine has superseded Miller v. State, 403 So.2d 1307 (Fla. 1981), and Sanders v. State, 403 So.2d 973 (Fla. 1981). Under the analysis in

Bertine, we believe the Patrol is not compelled to provide an alternative to impoundment, as we held in Miller and Sanders. Thus, we believe the officer in this instance acted reasonably by choosing to impound an automobile containing several thousands dollars in cash rather than leave it unprotected at the roadside.

For this reason, we conclude that the seizure of the marijuana cigarette butts in this instance was permissible as an incident of a proper impoundment. See Art. I, § 12, Fla. Const. Since the cigarette butts were not inside any closed or locked contianer, the suppression of the butts was improper under Bertine.

We, thus, approve in part and quash in part the result reached by the district court below, and remand for

proceedings consistent with this opinion. No renewed motion for rehearing will be entertained.

It is so ordered.

EHRLICH, C.J., and BARKETT, GRIMES and KOGAN, JJ., Concur

SHAW, J., Dissents with an opinion, in which OVERTON and McDONALD, JJ., Concur

SHAW, J., dissenting.

Article I, section 12 of the Florida Constitution provides that rights granted therein involving searches and seizures will be construed in conformity with the fourth amendment to the United States Constitution, as interpreted by the United States Supreme Court. Thus, the issue of impoundment and inventory search is controlled by South Dakota v. Opperman, 428 U.S. 364 (1976), and its progeny. I agree with the majority that Colorado

v. Bertine, 479 U.S. 367 (1987), has overruled Miller v. State, 403 So.2d 1307 (Fla. 1981), and Sanders v. State, 403 So.2d 973 (Fla. 1981), that the police are not required to provide an alternative to impoundment, and that the marijuana cigarette butts found in the car's ashtray are admissible. For the reasons which follow, I do not agree that Bertine mandates exclusion of the eighteen pounds of marijuana found in the locked suitcase.

Wells was stopped for speeding on a rural road between Palatka and St. Augustine in the evening hours. He alighted from his car and produced an expired driver's license and a car title in another's name. After the officer detected alcohol on his breath, Wells failed a roadside sobriety test and was arrested for driving under the

influence. Wells asked, however, to retrieve a coat from the car. While doing so, the officer saw a large sum of cash lying on the floorboard in front of the driver's seat. Wells gave conflicting explanations of this money and it was impounded and inventoried. The arresting officer asked Wells to open the car trunk and Wells agreed, saying he did not know what was inside, but neither the officer nor Wells could open the trunk. Wells agreed that the trunk could be forcibly opened, if necessary, after towing. The car was left with a backup officer and later towed. The arresting officer transported Wells to the local police station for a breathalyzer test and proceeded to the storage area to inventory the car. The arresting officer found two marijuana cigarette

butts in the car's ashtray. The tow operator then opened the trunk where a locked suitcase was found. The suitcase was forced open and eighteen pounds of marijuana in a trash bag were seized.

The majority holds that the police acted properly in impounding the car. However, relying primarily on Bertine, the majority holds that the eighteen pounds of marijuana should be excluded because Florida Highway Patrol standardized procedures do not specifically mandate that locked containers found in impounded cars be opened and inventoried. Although the FHP can easily remedy this perceived deficiency in their operating instructions, I am persuaded that the current instructions effectively mandate the opening and inventorying of

such closed containers when a vehicle is impounded and that these instructions are indistinguishable from those in Bertine.

The inventorying of the contents of impounded cars is based on three distinct needs: to protect the owner's property; to protect the police against claims over lost or stolen property; and to protect the police from potential dangers, such as explosives. Opperman, 428 U.S. at 369. The Florida Highway Patrol, Forms and Procedures Manual, section 16.00.00, provides:

> In the course of duty on a day to day basis, it is necessary for the protection of the Trooper and the Department to inventory vehicles being towed and/or stored. Vehicles which are towed as a result of an accident, abandoned, seized, incident to an arrest, or otherwise detained in storage, and not in the possession of

the owner become the responsibility of the impounding officer. The officer is liable for the vehicle, its parts and contents. Therefore, for the protection of the officer and the Department, the following forms and instructions have been developed for the Trooper to inventory and make a record of vehicle and private property on an inventory sheet that will also serve as a receipt with (1) a copy for the Department, (2) a copy for the towing company, (3) a copy of release, (4) a copy for the impounding officer, and (5) a copy for the owner/or driver. The same amount of copies of the Property Receipt with the same designation will be provided.

(Emphasis supplied.) Chapter 16.01.00 of the manual provides that inventory forms will be used any time a vehicle is towed and/or stored. Chapter 16.02.00 instructs officers, inter alia: "Lost Property in Vehicle--Inventory of all articles in the vehicle should be shown such as

articles of clothing, equipment and tools." (Emphasis supplied.) The companion form contains columns labelled "Item," "Quantity," and "Description of Property Obtained."

In my view, these instructions make clear that an inventory is required for all impounded cars and that the inventory will be comprehensive and detailed, extending down to articles, not merely containers, closed or otherwise. This reading of the instructions is consistent with the testimony of the officer who conducted the arrest and inventory. According to this officer, he consulted with his backup officer and supervisor, and, as in the case of previous arrests, the inventory was performed according to procedures he was supposed to follow. This

understanding of the standard instructions by the persons to whom they are addressed is also consistent with the three purposes of the inventory set forth in Opperman and reiterated in Bertine, none of which would be adequately served if closed containers were not opened and inventoried when vehicles are impounded.

The majority's conclusion that here, unlike Bertine, the police operating instructions do not mandate the opening of closed containers is contrary to the facts of Bertine as we have them. Neither Chief Justice Rehnquist's opinion for the Court nor Justice Blackmun's concurring opinion actually quotes the police operating instructions which the Court found mandated opening closed containers for

inventory. These instructions were, however, quoted by Justice Marshall in dissent where he argued that no standardized criteria limited the police officer's discretion. The operative words are "the Officer shall conduct a detailed vehicle inspection and inventory and record it upon the VEHICLE IMPOUND FORM." Bertine, 479 U.S. at 380 n.4. These instructions require a "detailed" inventory but they are certainly no more explicit or definitive than the Patrol instructions quoted above which make the impounding officer responsible for the vehicle, its parts and contents, and require completion of an inventory form listing all articles, such as articles of clothing, equipment, and tools. Chief Justice Rehnquist, for the Court, responded to Justice Marshall's

criticism by finding that the instructions not only circumscribed the discretion of individual officers, they also protected the vehicle and its contents and minimized claims of property loss. Bertine, 479 U.S. at 376 n.7. The standard Patrol instructions here are even more specific than those which the Bertine concurring opinion found "mandate[d] the opening of closed containers and the listing of their contents." 479 U.S. at 377 (Blackmun, J., concurring). In my view, Bertine stands for the proposition that when a legitimate impoundment is made and standard police instructions mandate that an inventory be conducted, contraband discovered is constitutionally admissible.

The majority also distinguishes United States v. Ross, 456 U.S. 798

(1982), holding that Ross addresses probable cause searches only and is not relevant to consent searches. However, in cases cited by petitioner and not distinguished by the majority, federal courts have found Ross relevant to the scope of a consent search. United States v. Kapperman, 764 F.2d 786, 794 (11th Cir. 1985); United States v. White, 706 F.2d 806, 808 (7th Cir. 1983). Moreover, on the authority of Bertine, Ross is relevant to inventory searches.

> "When a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions between closets, drawers, and containers, in the case of a home, or between glove compartments,

> upholstered seats, trunks, and wrapped packages, in the case of vehicle, must give way to the interest in the prompt and efficient completion of the task at hand." United States v. Ross, supra, 456 U.S. at 821, 102 S.Ct. at 2170.

We reaffirm these principles here: "'[a] single familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interest involved in the specific circumstances they confront.'" See Lafayette, supra, 462 U.S. at 648, 103 S.Ct. at 2610 (quoting New York v. Belton, 453 U.S. 454, 458, 101 S.Ct. 2860, 2863, 69 L.Ed.2d 768 (1981)).

Bertine, 479 U.S. at 375. The broad application of these quoted words and the fact that the Bertine Court chose to affirm their application to a non-probable cause, inventory search

strongly suggests that the Supreme Court does not take the narrow view of Ross which the majority adopts here. While Ross would not be authority to exceed the specific scope of a restricted consent, as the majority points out, it would appear to be applicable to an unrestricted consent search, or an inventory search, such as here.

In summary, the majority has misapplied Bertine which, in my view, is factually and legally indistinguishable from the case at hand. I would quash the decision below and reinstate the conviction.

OVERTON and McDONALD, JJ., Concur

Application for Review of the Decision of the District Court of Appeal - District Conflict of Decisions

Fifth District - Case No. 85-1630

(Putman County)

Robert A. Butterworth, Attorney General; Joseph N. D'Achille, Jr. and Fleming Lee, Assistant Attorneys General, Daytona Beach, Florida; and Elizabeth Masters and Walter M. Meginniss, Assistant Attorneys General, Tallahassee, Florida,

for Petitioner

Sharon W. Ehrenreich of Moore & Ehrenreich, Gainesville, Florida,

for Respondent

Enoch J. Whitney, General Counsel and R.W. Evans, Assistant General Counsel, Tallahassee, Florida,

Amicus Curiae for Department of Highway Safety and Motor Vehicles

STATE OF FLORIDA,
Petitioner,

v.

MARTIN LESLIE WELLS,
Respondent.

No. 69,363

Supreme Court of Florida

December 1, 1988

BARKETT, J.

We have for review Wells v. State, 492 So.2d 1375 (Fla. 5th DCA 1986), based on express and direct conflict with State v. Wargin, 418 So.2d 1261 (Fla. 4th DCA 1982). We have jurisdiction. Art. V, § 3(b)(3), Fla. Const. We approve in part and quash in part the decision of the district court below.

While driving a car loaned by a friend, respondent was stopped by the highway patrol for speeding. The trooper noticed the smell of alcohol upon respondent's breath and arrested him for driving under the influence. At this time, respondent agreed to accompany the trooper to the station to take a breathalyzer test.[1] When respondent asked if he could retrieve a coat from the automobile, the trooper agreed, but accompanied respondent to the vehicle. At this point, the trooper saw an amount of cash lying on the car's floorboard. 492 So.2d at 1375-76.

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[1] A test later showed that respondent's blood alcohol content was below the legal limit. Wells v. State, 492 So.2d 1375, 1376 n.1 (Fla. 5th DCA 1986).

Suspicious of the cash's origin, the trooper asked respondent to open the trunk of the car. Respondent agreed, stating that he did not know what was in the trunk. However, neither respondent nor the trooper were able to manipulate a special locking mechanism that opened the trunk only when the key was pushed in and turned simultaneously. Giving up the effort, the trooper told respondent that the automobile must be impounded and received permission to force the trunk open if necessary and look inside. The trooper did not ask for or receive permission to look in the passenger compartment. Id. at 1376.

The car subsequently was transported to a facility under contract with the state, where a search was conducted. During this search, two marijuana cigarette butts were found in

an ashtray. The trooper, assisted by others, opened the trunk with the key and found a locked suitcase inside. Under the direction of the trooper, employees of the facility attempted to pry open the suitcase with a knife. Some ten minutes later they succeeded, and found a garbage bag inside containing a large amount of marijuana. Id.

Respondent was charged with possession of a controlled substance. After his motion to suppress the contraband was denied at trial, respondent pled nolo contendere, but reserved his right to appeal on the suppression issue. The Fifth District later determined that the trial court had erred, and ordered the contraband suppressed. Id. at 1375, 1378. From this order, the state now seeks review.

The facts of this case raise three distinct questions of search and seizure law: the scope of the consent search conducted in this instance, the propriety of opening the locked container found during the automobile inventory search, and the propriety of the impoundment of respondent's vehicle.

The Consent Search

The state urges us to hold that respondent's general consent to open and look into the trunk of the automobile was sufficient to authorize the opening of any locked or closed containers found there. In support of this argument, the state contends that Wargin correctly extended the principles of United States v. Ross, 456 U.S. 798 (1982), to the consent-search context. We cannot agree.

Ross clearly stands for the proposition that, so long as probable cause exists to search an automobile, the police lawfully can search any container found inside. Thus, the Ross Court upheld the search of an automobile after the police received a tip from a reliable informant that drugs were being sold from the vehicle, stopped it and found a paper bag and a zippered pouch containing contraband and a large amount of cash. 456 U.S. at 800-01. Based on these facts, Ross held: "If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." Id. at 825 (emphasis added).

There was no issue of a consent search in Ross. Indeed, the principles

that apply to probable cause searches are totally incongruous to the freedom of choice inherent in consent. As State v. Fuksman, 468 So.2d 1067 (Fla. 3d DCA 1985), and the district court below recognized:

> The considerations upon which the holding in Ross is grounded do not exist in the consent search context where there is no probable cause. If a person consents to the search of a vehicle containing luggage and a search of the vehicle alone reveals nothing, the problem of the possible greater intrusion by detention or seizure does not arise because the probable cause necessary to secure the warrant is nonexistent. Therefore, the officer has no dilemma because he has no choice; he must let the consenting party be on his way. It is because the citizen has not given the police probable cause to believe his vehicle contains contraband that he has the right to proceed without official interference. Absent probable cause, the police can engage in the greater

> intrusion of searching the luggage only under circumstances in which the scope of the consent to search is defined clearly enough to include the luggage.

Fuksman, 468 So.2d at 1070. A consensual search by its very definition is circumscribed by the extent of the permission given, as determined by the totality of the circumstances. Id. On the other hand, a probable cause search and its scope are compelled, no matter what might be the wish of the individual. A theory based on consent and one based upon state-sponsored coercion thus are incompatible, and fusing them could lead to absurd results. Under such logic, the search of the trunk of a car would be permitted even if the defendant had said, "You can look in my car but not in my trunk."

Thus, we decline to apply Ross to consent searches, and, to the extent it conflicts with our opinion today, we disapprove Wargin. We cannot agree that the state and its agents, by receiving an ill-defined or limited consent to be searched, suddenly are vested with all the authority conferred by a warrant. Such a holding effectively would vitiate the entire theory upon which the consent search rests.

We also concur with the district court's conclusion that the consent given in this instance did not permit the police to pry open locked luggage with a knife. Respondent's permission merely indicated that the police could look into the automobile trunk. This was an insufficient basis for the police action that followed.

In so holding, we decline to establish a rule that effectively would countenance breaking open a locked or sealed container solely because the police have permission to be in the place where that container is located, as in this instance. This would render the very act of locking or sealing the container meaningless and would utterly ignore a crucial concern underlying fourth amendment jurisprudence: the expectation of privacy reasonably manifested by an individual in his locked luggage, no matter where that luggage is located.[2]

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[2] Ross itself reached this conclusion when it explicitly distinguished United States v. Chadwick, 433 U.S. 1 (1977), and Arkansas v. Sanders, 442 U.S. 753 (1979). See United States v. Ross, 456 U.S. 798, 811-15 (1982). Chadwick had drawn a clear distinction between automobiles, which have a "diminished expectation of privacy," 433 U.S. at 12, and luggage which has "expectations of privacy ... substantially greater than

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In the present case, the arresting officer plainly stated that he had no actual consent to open the suitcase found in the automobile trunk.[3] We

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thus must agree with the court below that the general consent to look in an automobile trunk in this case did not constitute permission to pry open a locked piece of luggage found inside.[4]

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> Q: Now, since [Wells] had indicated to you that he did not know what was in the trunk, you clearly did not extend the questioning to say: "Well, whatever I find in the trunk, is it okay if I look in that, too?"
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Id. at 742 n.6 (emphasis added; citations omitted). As Justice Blackmun noted in his special concurring opinion, joined by two other justices:[5]

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> the scope of the inventory search. This absence of discretion ensures that inventory searches will not be used as a purposeful and general means of discovering evidence of crime. Thus, it is permissible for police officers to open closed containers in an inventory search only if they are following standard police procedures that mandate the opening of such containers in every impounded vehicle.

Id. at 744 (Blackmun, Powell & O'Connor, J.J., concurring) (emphasis added; citation omitted).

The impermissible discretion to open or not to open containers is evident in this case. Contrary to Bertine's holding, the Florida Highway Patrol ("Patrol"), at least upon this record, operates under no mandatory standardized policy regarding closed containers. Unlike in Bertine, this record is devoid of any trial-court

finding "that the police department's standard procedures did mandate the opening of closed containers and the listing of their contents." Id. Joining this action as amicus curiae, the Patrol itself has submitted copies of relevant portions of its Policy Manual, which fail to address the question. Chapter 16 of the Policy Manual, governing the receipt of property and vehicles, speaks in general terms and requires nothing more than an "[i]nventory of all articles in the vehicle ... such as articles of clothing, equipment and tools." Policy Manual, at 16-4. There is no mention of opening closed containers.

In the absence of a policy specifically requiring the opening of closed containers found during a legitimate inventory search, Bertine

prohibits us from countenancing the procedure followed in this instance. The police under Bertine must mandate either that all containers will be opened during an inventory search, or that no containers will be opened. There can be no room for discretion. Since this record reveals no such mandatory policy, we must hold that the opening of the luggage in this instance violated Bertine.

The Impoundment Issue

Finally, we find that the impoundment in this instance, and hence the search of the interior of the car that followed was proper under Bertine. This conclusion is compelled by the fact that, to the extent of any inconsistency, Bertine has superseded Miller v. State, 403 So.2d 1307 (Fla.

1981), and Sanders v. State, 403 So.2d 973 (Fla. 1981). Under the analysis in Bertine, we believe the Patrol is not compelled to provide an alternative to impoundment, as we held in Miller and Sanders. Thus, we believe the officer in this instance acted reasonably by choosing to impound an automobile containing several thousands dollars in cash rather than leave it unprotected at the roadside.

For this reason, we conclude that the seizure of the marijuana cigarette butts in this instance was permissible as an incident of a proper impoundment. See Art. I, § 12, Fla. Const. Since the cigarette butts were not inside any closed or locked container, the suppression of the butts was improper under Bertine.

We, thus, approve in part and quash in part the result reached by the district court below, and remand for proceedings consistent with this opinion. No renewed motion for rehearing will be entertained.

It is so ordered.

EHRLICH, C.J., and BARKETT, GRIMES and KOGAN, JJ., Concur

SHAW, J., Dissents with an opinion, in which OVERTON and McDONALD, JJ., Concur

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

SHAW, J., dissenting.

Article I, section 12 of the Florida Constitution provides that rights granted therein involving searches and seizures will be construed in conformity with the fourth amendment to the United States Constitution, as interpreted by the United States Supreme Court. Thus, the issue of

impoundment and inventory search is controlled by South Dakota v. Opperman, 428 U.S. 364 (1976), and its progeny. I agree with the majority that Colorado v. Bertine, 479 U.S. 367 (1987), has overruled Miller v. State, 403 So.2d 1307 (Fla. 1981), and Sanders v. State, 403 So.2d 973 (Fla. 1981), that the police are not required to provide an alternative to impoundment, and that the marijuana cigarette butts found in the car's ashtray are admissible. For the reasons which follow, I do not agree that Bertine mandates exclusion of the eighteen pounds of marijuana found in the locked suitcase.

Wells was stopped for speeding on a rural road between Palatka and St. Augustine in the evening hours. He alighted from his car and produced an expired driver's license and a car

title in another's name. After the officer detected alcohol on his breath, Wells failed a roadside sobriety test and was arrested for driving under the influence. Wells asked, however, to retrieve a coat from the car. While doing so, the officer saw a large sum of cash lying on the floorboard in front of the driver's seat. Wells gave conflicting explanations of this money and it was impounded and inventoried. The arresting officer asked Wells to open the car trunk and Wells agreed, saying he did not know what was inside, but neither the officer nor Wells could open the trunk. Wells agreed that the trunk could be forcibly opened, if necessary, after towing. The car was left with a backup officer and later towed. The arresting officer transported Wells to the local police

station for a breathalyzer test and proceeded to the storage area to inventory the car. The arresting officer found two marijuana cigarette butts in the car's ashtray. The tow operator then opened the trunk where a locked suitcase was found. The suitcase was forced open and eighteen pounds of marijuana in a trash bag were seized.

The majority holds that the police acted properly in impounding the car. However, relying primarily on Bertine, the majority holds that the eighteen pounds of marijuana should be excluded because Florida Highway Patrol standardized procedures do not specifically mandate that locked containers found in impounded cars be opened and inventoried. Although the FHP can easily remedy this perceived

deficiency in their operating instructions, I am persuaded that the current instructions effectively mandate the opening and inventorying of such closed containers when a vehicle is impounded and that these instructions are indistinguishable from those in Bertine.

The inventorying of the contents of impounded cars is based on three distinct needs: to protect the owner's property; to protect the police against claims over lost or stolen property; and to protect the police from potential dangers, such as explosives. Opperman, 428 U.S. at 369. The Florida Highway Patrol, Forms and Procedures Manual, section 16.00.00, provides:

> In the course of duty on a day to day basis, it is necessary for the protection of the

> Trooper and the Department to inventory vehicles being towed and/or stored. Vehicles which are towed as a result of an accident, abandoned, seized, incident to an arrest, or otherwise detained in storage, and not in the possession of the owner become the responsibility of the impounding officer. The officer is liable for the vehicle, its parts and contents. Therefore, for the protection of the officer and the Department, the following forms and instructions have been developed for the Trooper to inventory and make a record of vehicle and private property on an inventory sheet that will also serve as a receipt with (1) a copy for the Department, (2) a copy for the towing company, (3) a copy of release, (4) a copy for the impounding officer, and (5) a copy for the owner/or driver. The same amount of copies of the Property Receipt with the same designation will be provided.

(Emphasis supplied.) Chapter 16.01.00 of the manual provides that inventory forms will be used any time a vehicle is towed and/or stored. Chapter

16.02.00 instructs officers, inter alia: "Lost Property in Vehicle--Inventory of all articles in the vehicle should be shown such as articles of clothing, equipment and tools." (Emphasis supplied.) The companion form contains columns labelled "Item," "Quantity," and "Description of Property Obtained."

In my view, these instructions make clear that an inventory is required for all impounded cars and that the inventory will be comprehensive and detailed, extending down to articles, not merely containers, closed or otherwise. This reading of the instructions is consistent with the testimony of the officer who conducted the arrest and inventory. According to this officer, he consulted with his backup officer

and supervisor, and, as in the case of previous arrests, the inventory was performed according to procedures he was supposed to follow. This understanding of the standard instructions by the persons to whom they are addressed is also consistent with the three purposes of the inventory set forth in Opperman and reiterated in Bertine, none of which would be adequately served if closed containers were not opened and inventoried when vehicles are impounded.

The majority's conclusion that here, unlike Bertine, the police operating instructions do not mandate the opening of closed containers is contrary to the facts of Bertine as we have them. Neither Chief Justice Rehnquist's opinion for the Court nor

Justice Blackmun's concurring opinion actually quotes the police operating instructions which the Court found mandated opening closed containers for inventory. These instructions were, however, quoted by Justice Marshall in dissent where he argued that no standardized criteria limited the police officer's discretion. The operative words are "the Officer shall conduct a detailed vehicle inspection and inventory and record it upon the VEHICLE IMPOUND FORM." Bertine, 479 U.S. at 380 n.4. These instructions require a "detailed" inventory but they are certainly no more explicit or definitive than the FHP instructions quoted above which make the impounding officer responsible for the vehicle, its parts and contents, and require completion of an inventory form listing

all articles, such as articles of clothing, equipment, and tools. Chief Justice Rehnquist, for the Court, responded to Justice Marshall's criticism by finding that the instructions not only circumscribed the discretion of individual officers, they also protected the vehicle and its contents and minimized claims of property loss. Bertine, 479 U.S. at 376 n.7. The standard FHP instructions here are even more specific than those which the Bertine concurring opinion found "mandate[d] the opening of closed containers and the listing of their contents." 479 U.S. at 377 (Blackmun, J., concurring). In my view, Bertine stands for the proposition that when a legitimate impoundment is made and standard police instructions mandate that an inventory be conducted,

contraband discovered is constitutionally admissible.

The majority also distinguishes United States v. Ross, 456 U.S. 798 (1982), holding that Ross addresses probable cause searches only and is not relevant to consent searches. However, in cases cited by petitioner and not distinguished by the majority, federal courts have found Ross relevant to the scope of a consent search. United States v. Kapperman, 764 F.2d 786, 794 (11th Cir. 1985); United States v. White, 706 F.2d 806, 808 (7th Cir. 1983). Moreover, on the authority of Bertine, Ross is relevant to inventory searches.

> "When a legitimate search is under way, and when its purpose and its limits have been

> precisely defined, nice distinctions between closets, drawers, and containers, in the case of a home, or between glove compartments, upholstered seats, trunks, and wrapped packages, in the case of vehicle, must give way to the interest in the prompt and efficient completion of the task at hand." United States v. Ross, supra, 456 U.S. at 821, 102 S.Ct. at 2170.
>
> We reaffirm these principles here: "'[a] single familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interest involved in the specific circumstances they confront.'" See Lafayette, supra, 462 U.S. at 648, 103 S.Ct. at 2610 (quoting New York v. Belton, 453 U.S. 454, 458, 101 S.Ct. 2860, 2863, 69 L.Ed.2d 768 (1981)).

Bertine, 479 U.S. at 375. The broad application of these quoted words and the fact that the Bertine Court chose to affirm their application to a non-probable cause, inventory search strongly suggests that the Supreme Court does not take the narrow view of Ross which the majority adopts here. While Ross would not be authority to exceed the specific scope of a restricted consent, as the majority points out, it would appear to be applicable to an unrestricted consent search, or an inventory search, such as here.

In summary, the majority has misapplied Bertine which, in my view, is factually and legally indistinguishable from the case at hand. I would quash the decision below and reinstate the conviction.

OVERTON and McDONALD, JJ., Concur

Application for Review of the Decision of the District Court of Appeal - Direct Conflict of Decisions

Fifth District - Case No. 85-1630
(Putnam County)

Robert A. Butterworth, Attorney General; and Joseph N. D'Achille, Jr., Daytona Beach, Florida, and Elizabeth Masters, Tallahassee, Florida, Assistant Attorneys General,

for Petitioner

Sharon W. Ehrenreich of the Law Firm of Huntley Johnson, Gainesville, Florida,

for Respondent

Enoch J. Whitney, General Counsel and R.W. Evans, Assistant General Counsel, Tallahassee, Florida,

Amicus Curiae for Department of Highway Safety and Motor Vehicles

MARTIN LESLIE WELLS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 85-1630

In the District Court of Appeal
of the State of Florida
Fifth District

August 21, 1986

Appeal from the Circuit Court for Putnam County;
E.L. Eastmoore and Robert R. Perry, Judges

Sharon W. Ehrenreich, of Law Firm of Huntley Johnson, Gainesville, for Appellant.

Jim Smith, Attorney General, Tallahassee, Florida, and Joseph N. D'Achille, Jr., Assistant Attorney General, Daytona Beach, Florida, for Appellee.

Orfinger, J.

The defendant appeals from a conviction for possession of a controlled substance and the term of probation imposed, having entered a plea of nolo contendere, specifically preserving his right to appeal the denial of his motion to suppress evidence. Because we conclude that the warrantless search was unreasonable and unlawful, we reserve.

The facts are not in dispute. On the evening of Monday, February 11, 1985, Trooper Rodney Adams of the Florida Highway Patrol stopped the appellant for speeding. The appellant exited his vehicle and produced his driver's license and explained to the officer that the car belonged to a friend. The officer ran a license and

tag check and verified the accuracy of the statement concerning the ownership of the car, and also determined that the appellant's driver's license had expired. During the course of conversation, Trooper Adams noticed the smell of alcohol upon the appellant's person. After appellant acknowledged that he had been drinking, field sobriety tests were administered to him and the appellant was then arrested for driving under the influence of alcohol. Appellant agreed to take a breathalizer test and Trooper Adams informed him that he would be transported to the machine located at the Florida Highway Patrol Station. The officer testified that the car was parked off the highway, and was not a hazard to traffic.

Before departing to the station, appellant asked Adams if he could retrieve his jacket, which was in the automobile. Adams returned to the car with appellant to be certain that appellant was not going after a weapon. When appellant opened the car door Trooper Adams, using his flashlight, saw what appeared to be a large sum of money lying on the floorboard on the driver's side.

The officer testified that while he wondered about the money, he had no reason to believe that there was any contraband in the car, but because he believed that he had to impound the car he asked for permission to look in its trunk. Appellant first attempted to open the trunk and when unable to do so, gave the key to Trooper Adams who was also unsuccessful. Appellant was

told that if the trunk could not be opened with the key, that it may have to be "popped" open. The appellant agreed to this and indicated that he did not know what was in the trunk. Appellant was taken to the Florida Highway Patrol station to take the breathalyzer test and the vehicle was towed to K & S Automotive at approximately 12:30 or 1:00 A.M. The officer never asked for and was never given permission to search the passenger compartment of the car.

Trooper Adams arrived at K & S Automotive at approximately 1:30 A.M. and proceeded to search the car with the assistance of Grover Bryon, an employee of K & S. A search of the interior of the car resulted in the discovery of two marijuana "roaches" in the ashtray. Bryon opened the locked

trunk with the key, explaining to the officer that the button had to be depressed as the key was turned. There was only a locked blue suitcase in the trunk. Adams instructed Bryon and another employee of K & S to pry open the locked suitcase. After about 10 minutes, the suitcase was pryed open and a dark colored plastic garbage bag was found inside the suitcase. Adams opened the garbage bag and found inside a quantity of marijuana.

Although the officer throughout his testimony characterized the search as an "inventory search," it is clear that the warrantless search cannot be sustained on that basis. The parked automobile was not a traffic hazard, there was no cause to believe that it contained contraband, and the officer concededly did not advise the defendant

of alternatives to impoundment which were available to him.[1] Miller v. State, 403 So.2d 1307 (Fla. 1981); State v. Marini, 488 So.2d 551 (Fla. 5th DCA 1986); Moore v. State, 417 So.2d 1131 (Fla. 5th DCA 1982). The evidence would not support the search on the basis of probable cause because on this point too, the officer conceded that he had none. Nor can the search be supported as one incident to the defendant's arrest, because it was not

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[1] The officer testified that the defendant was alert and cooperative. The defendant tested .08 percent on the breathalyzer, less than the .1 percent required by law for a legal presumption that the person is under the influence of alcoholic beverages to the extent that his normal faculties are imparied. § 316.1934, Fla. Stat. (1985). Thus it is clear that there was no impediment to a dialogue between the officer and the defendant about possible alternatives to impoundment of the vehicle. Nor do these facts suggest that the defendant lacked the capacity to understand those alternatives. See Sanders v. State, 403 So.2d 973 (Fla. 1981).

contemporaneous to the arrest. Preston v. United States, 376 U.S. 364, 84 S.Ct. 881, 11 L.Ed.2d 777 (1964); State v. Marini, supra.

The State does not dispute these principles, but does contend, however, that the search was based on consent, a recognized exception to the warrant requirement. The real question thus presented is whether the appellant's consent to look in the trunk of the car included consent to open and search the locked suitcase found in the trunk. If the search of the suitcase (and the passenger compartment) was validly based on consent, the search is not invalidated by the fact that the officer mistakenly characterized it as an inventory search. Padron v. State, 449 So.2d 811 (Fla. 1984).

The State relies strongly on State v. Wargin, 418 So.2d 1261 (Fla. 4th DCA 1982) wherein the court extended the rule announced in Ross v. United States, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982) to consent searches. In Ross, the Supreme Court held that if a police officer has probable cause to search an automobile, then he justified in searching every part of the vehicle and all containers found therein that may conceal the object of the search. Id. In Wargin, the Fourth DCA applied this rule to a consensual search and held that consent to search a suitcase automatically extended to a search of all containers therein.

The defendant in Wargin was stopped in an airport by narcotics agents. The defendant gave his consent

to a search of his suitcase. In the presence of the defendant, the police searched his suitcase and found a "strangely heavy" Kleenex box. The box was opened and a plastic bag containing cocaine was found therein. The court held that an additional request for consent to search the Kleenex box was unnecessary for once the defendant gave his consent to a search of the suitcase, he consented to the search of all containers therein. The court, without extensive analysis, explained its holding as an extension of the Ross rule to consensual searches.

The Third DCA has considered the same question and has held contrary to the Wargin decision. In State v. Fuksman, 468 So.2d 1067 (Fla. 3d DCA 1985), the defendant, a suspect in the theft of airline tickets, was stopped

in his automobile for committing a traffic violation. The law enforcement officer asked the defendant if he could search his car, but did not inform the defendant of the nature of the investigation or the object of the search. The defendant agreed and unlocked the doors. The officer opened the door and picked up the defendant's locked briefcase and opened it, finding the airline tickets.

In appealing the trial court's suppression of the evidence, the State argued that Wargin compelled reversal in that the defendant's consent to a search of his automobile extended to a search of his briefcase. In a well-reasoned opinion, the court re-examined the decision in Ross and held that it did not apply to consensual searches. The court recognized that the

considerations upon which the holding in Ross was grounded to do exist in a consensual search:

> The foundation of the automobile exception is the existence of probable cause. Ross, 456 U.S. at 807-09, 102 S.Ct. at 2163-64; Caroll v. United States, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1924). It is the presence of probable cause and the practical considerations which emanate from its presence in the automobile search context which form the basis of the decision in Ross. The court emphasized, first, the necessity of the existence of probable cause and, second, the consequences of not allowing a search of containters. Those consequences include the greater intrusion of seizure or detention of the vehicle, containers and/or persons involved until a probable cause determination can be made by a magistrate. Ross, 456 U.S. at 806-08, 102 S.Ct. at 2163-64. The court specifically indicated that it was not deciding the scope of warrantless searches of automobiles done without

probable cause. Id. at 809, n.11, 102 S.Ct. at 2164 n.11.

> The considerations upon which the holding in Ross is grounded do not exist in the consent search context where there is no probable cause. If a person consents to a search of a vehicle containing luggage and a search of the vehicle alone reveals nothing, the problem of the possible greater intrusion by detention or seizure does not arise because the probable cause necessary to secure the warrant is nonexistent. Therefore, the officer has no delemma because he has no choice; he must let the consenting party be on his way. It is because the citizen has not given the police probable cause to believe his vehicle contains contraband that he has the right to proceed without official interference. Absent probable cause, the police can engage in the greater intrusion of searching the luggage only under circumstances in which the scope of the consent to search is defined clearly enough to include the luggage. [Emphasis in original].

Fuksman, 463 So.2d at 1069-1070.

We agree with the analysis of Fuksman.[2] Ross clearly was bottomed in the existence of probable cause, as indicated by the concluding paragraph of that opinion:

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[2] Were it not for the broad holding in Wargin that a general consent to search includes consent to search closed containers found within the search area, we could agree with its result on the facts of that case. Because the defendant fit a drug courier profile, the officers approached him, identified themselves as narcotics agents and asked for permission to search the suitcase. Clearly they were searching for narcotics. Thus, from those facts, the court could conclude that the consent to search the suitcase included consent to search any container within the suitcase which might contain the announced object of the search. In the case sub judice nothing even resembling these facts is present. This case more closely resembles State v. Carney, 423 So.2d 511 (Fla. 3d DCA 1982), where the court held that permission to go aboard defendant's boat was not equivalent to consent to search hidden compartments and containers.

> We hold that the scope of the warrantless search authorized by [the automobile] exception is no broader and no narrower than a magistrate could legitimately authorize by warrant. If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.

102 S.Ct. at 2173.

State v. Cargal, 417 So.2d 811 (Fla. 5th DCA 1982), also relied on by the State, can be distinguished. In Cargal, the defendant gave the police permission to search his van. Upon entering the van, the officers detected a strong ordor of marijuana emanating form a duffel bag in the van. The texture of the bag was also grassy in nature. The court reversed the order suppressing the marijuana and an

automatic weapon found in the bag, citing Ross as well as other cases. It is obvious that once the officers were lawfully inside the van based on consent to enter, the odor of marijuana coupled with the grassy texture of the contents gave the officers probable cause to beleive that the bag contained contraband, and because it was contained within a motor vehicle, a warrantless search of the bag was authorized. The essential diffeence between Cargal and this case is that at no time prior to prying open the suitcase did the officer ever have probable cause to beleive that the automobile or any container therein held any contraband.

Consent searches operate on different rules than probable cause searches. The State agrees that a

consensual search may be restricted in terms of time or area, Leonard v. State, 431 So.2d 614 (Fla. 4th DCA 1983), and must be terminated upon withdrawl of consent. Goldberg v. State, 407 So.2d 352 (Fla. 4th DCA 1981). No such rules apply in probable cause searches. What is included within the scope of a consent to search is ordinarly to be determined by the totality of the circumstances. Martin v. State, 411 So.2d 169 (Fla. 1982); Fuksman, supra. We hold here that the totality of the circumstances demonstrate that appellant's permission "to look in the trunk" was that and nothing more, and did not extend to the locked luggage within the trunk, nor to the passenger compartment of the car. Without such consent, the search was

unlawful. See Horvitz v. State, 433 So.2d 545 (Fla. 4th DCA 1983).

REVERSED.

UPCHURCH, C.J., AND COBB, J., concur.

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT,
IN AND FOR PUTNAM COUNTY,
FLORIDA

CASE NO. 85-167-CF-J

STATE OF FLORIDA,

Plaintiff,

vs. ORDER

MARTIN LESLIE WELLS,

Defendant.

THIS CAUSE coming before this Court upon Defendant's Motion to Suppress Evidence and this Court having reviewed respective supportive case law, reviewed pertinent testimony, heard oral arguments and being otherwise fully advised, it is

ORDERED and ADJUDGED that the Defendant's Motion to Suppress Evidence is hereby denied.

DONE and ORDERED in Chambers at Palatka, Putnam County, Florida, this 9th day of August, 1985.

/s/ E. L. EASTMOORE
E. L. EASTMOORE

cc: Maureen D. Sullivan
Assistant State Attorney

Huntley Johnson
Attorney for Defendant

FLORIDA HIGHWAY PATROL
FORMS AND PROCEDURAL MANUAL

Chapter 16

RECEIPTS, PROPERTY AND VEHICLE

16.00.00 Purpose of Vehicle and Property Receipts

In the course of duty on a day to day basis, it is necessary for the protection of the Trooper and the Department to inventory vehicles being towed and/or stored. Vehicles which are towed as a result of an accident, abandoned, seized, incident to an arrest, or otherwise detained in storage, and not in the possession of the owner become the responsibility of the impounding officer. The officer is liable for the vehicle, its parts and contents. Therefore, for the protection of the officer and the

Department, the following forms and instructions have been developed for the Trooper to inventory and make a record of vehicle and private property on an inventory sheet that will also serve as a receipt with (1) a copy for the Department, (2) a copy for the towing company, (3) a copy of release, (4) a copy for the impounding officer, and (5) a copy for the owner/or driver. The same amount of copies of the Property Receipt with the same designation will be provided.

16.01.00 Application

These forms will be used anytime a vehicle is towed and/or stored. It is to be used when property is impounded or stored for any reason. If the owner or possessor is not present, arrangements should be made to leave

the receipt in a conspicuous place on the vehicle. In most incidents Property Receipts should be given to the owner or in his/her absence, it should be given to the driver.

16.02.00 Instructions for Completing the Inventory and Vehicle Storage Receipt (HSMV 61801):

1. Date of Storage/Towing - Enter date vehicle is being towed or stored. Example: 08-30-84.

2. Time - Enter time. Strike through non-applicable A.M. or P.M.

3. FHP Case Number - Enter assigned number.

4. Name/Address of Owner -

Show home address of owner, (avoid P. O. Box numbers), city, state, zip code.

5. Year Vehicle -
   Enter year vehicle was manufactured.

6. Make of Vehicle -
   Example: Ford, Chevrolet. Avoid types such as Mustang, Impala.

7. Body Style -
   Two (2) door, Four (4) door.

8. V.I.N. -
   Enter Vehicle Identification number.

9. Color -
   Enter color, designations rather than manufacture's color classi-

fication. Use basic colors - black, blue. If the vehicle is two tone use a slash to indicate such. Example: white/blue.

10. Tag Number -
    Enter complete license number on vehicle.

11. State -
    Enter the state the tag is assigned to. Proper abbreviation of state permissible. Example: Florida (FL), Georgia (GA).

12. Location Vehicle Towed From
    Enter location of where vehicle is being released to wrecker driver. Show state road, county road or street address if applicable. In rural areas give approximate

distance from nearest town or commnity.

13. Name of Towing Service -
Enter name of wrecker service. If not a rotation call, list address and city of towing service.

14. Address of Where Vehicle is Stored -
Show street address of location where vehicle is to be stored.

15. Hold on Vehicle -
Check appropriate block to indicate whether there is a hold on vehicle.

16. Reason for Hold -
Indicate the reason vehicle is being held. Example: Pending

Homicide Investigation, Hit and Run Investigation, Etc. If there is not a hold on vehicle this area must be left blank.

17. Equipment on Vehicle -
Check appropriate box indicating equipment affixed to vehicle. Under Other Equipment list any equipment in the vehicle that has not been listed above.

18. List Property in Vehicle -
Inventory of all articles in the vehicle should be shown such as articles of clothing, equipment and tools.

19. Identify Marks or Damage -
Indicate any identifying marks or damage to vehicle that occurred

prior to vehicle being released to the wrecker driver.

20. Signature -
Of Trooper indicating hold on vehicle. Vehicles with hold order orders are the responsibility of the Trooper. Keep in mind, vehicles is most cases cannot be held more than (72) hours without approval of State Attorney's Office.

21. Signature - Tow Truck Driver -
Have the person taking possession of vehicle sign. At this time the vehicle becomes the responsibility of the tow truck driver.

22. Signature - Impounding Officer(s)
- This is to be signed by the

Impounding Officer and if possible, another Trooper's signature certifying that the inventory is correct to the best of their knowledge.

23. Badge Number -
Current badge number of impounding Trooper.

24. Badge Number -
Current badge number of witness.

25. Troop -
Impounding officer's assigned Troop.

26. District -
Enter District within the assigned Troop.

27. Copies:

White - Original copy to be filed at District Headquarters.

Yellow -To be given to the owner and/or driver.

Pink - Copy to go the wrecker driver taking possession of vehicle.

16.03.00 Instructions for Completing the Evidence and/or Property Receipt HSMV 61802

1. Other Department Case No: Other case number not assigned by the Department. Example: Warrant from another Department.

2. Date -
Date property received.

3. FHP Case No. -
Case number assigned by the Florida Highway Patrol.

4. The nature of the property recorded and/or reason it was stored - Place a check mark by the appropriate information. Property of deceased; stolen property; bulk; physical evidence; trial; found; laboratory evidence; Destroy (to be destroyed); safe keeping.

5. Address where property impounded.

6. Type case - (accident, stolen, etc.).

7. Discovered by -
(enter full name, address, phone).

8. Owner/Victim -
(enter full name, address, phone). Cross out which ever does not apply.

9. Subject/Suspect Name -
Incarcerated - (Yes or No).
Warrant - (Yes or No).
(Warrant number should be other Department Case Number).

10. Item, Quantity and Description of property obtained -
(This section itemized list of property).

11. This section is to verify the property taken is a complete list of property taken from the person.

12. Signature of officer receiving

evidence/property - Enter appropriate Troop letter, District, I.D. number and badge number.

13. If necessary for proper handling, contact the State Attorney's Office and record the State Attorney, Assistant or otherwise name, address and phone for further referral.

14. When evidence is placed in the evidence locker, the officer in charge will sign the receipt and enter the reason stored, date and time. The Trooper should keep a copy of the receipt of the property. When it is necessary to take property out, the receipt will be returned and an entry made in this section as to who, why and

when the property is being removed. In cases for court, keeping record of the chain of custody as well as record on removal and return must be maintained at all times. The final disposition may be a court order to destroy the property or to return the property to the original possessor.